

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/02/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000211

FILED: \_\_\_\_\_

STATE OF ARIZONA

F TYLER RICH

v.

TIMOTHY DALE PORTELL

MICHAEL J DEW

PHX MUNICIPAL CT  
REMAND DESK CR-CCC

RULING  
AFFIRM/REMAND

PHOENIX CITY COURT

Cit. No. 5847515

Charge:   1.   DUI ALCOHOL  
          2.   DUI W/AC OF .10 OR MORE  
          3.   IMPRUDENT SPPED  
          5.   FAILURE TO YIELD-LEFT TURN MID-BLOCK

DOB:   10-29-1960

DOC:   12-14-1999

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since assignment on September 7, 2001. This decision is made within 30 days of that date as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Phoenix City Court and the Memoranda of counsel.

Appellant, Timothy Dale Portell, was charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Level Greater Than .10, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); Speeding, a civil traffic violation, in violation of A.R.S. Section 28-701(A); Failing to Drive Within One Lane, a civil traffic violation, in violation of A.R.S. Section 28-729.1; Failure to Yield, a civil traffic violation, in violation of A.R.S. 28-754(A); and No Insurance, a civil traffic violation, in violation of A.R.S. Section 28-4135(C). Appellant filed a Motion to Suppress the results of an Intoxilyzer based upon the State's failure to retain electronic data between December 15, 1999, and January 12, 2000. After hearing from both parties, the trial judge denied Appellant's Motion to Suppress. Thereupon both parties waived their rights to a jury trial and submitted the case to the judge on the basis of departmental reports and other exhibits. Appellant was found guilty or responsible on all charges except the Failure to Drive in One Lane charge. Appellant was ordered to serve 10 days in jail, nine days were to be suspended pending successful completion by Appellant of the SASS, an alcohol screening, education and treatment program. Appellant was fined \$443.00 and filed a timely Notice of Appeal in this case.

The only issue presented on appeal concerns the trial judge's denial of Appellant's Motion to Suppress the results of the breath alcohol test. Specifically, Appellant claims that he was denied important impeachment material by the failure of the State's computer system to maintain records (electronic data) on

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the Intoxilyzer 5000 which was the machine used to test Appellant's breath for alcohol. However, there are other test data in a non-computer-stored format available. Presumably, those records would satisfy the requirements in A.R.S. Section 28-1323(A)(5) to show that the Intoxilyzer device was operating correctly. Appellant is not able to show that the data that was not stored had any evidentiary value whatsoever.

This Court must not reverse a trial judge's ruling in the absence of a record which demonstrates a clear abuse of the trial judge's discretion.<sup>1</sup> An appellate court must view the facts in a light which is most favorable to upholding a trial judge's ruling, resolving reasonable inferences against the Appellant.<sup>2</sup>

There is clearly substantial evidence in the record in the form of Ms. Valdez' testimony to support the trial judge's ruling denying Appellant's Motion to Suppress. Therefore, the trial judge's determination must be affirmed.

IT IS ORDERED affirming the trial judge's denial of Appellant's Motion to Suppress.

IT IS FURTHER ORDERED affirming the judgments of guilt and responsibility, and the sentences and sanctions imposed.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.

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<sup>1</sup> State v. Morales, 170 Ariz. 360, 824 P.2d 756 (App. 1991).

<sup>2</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989).